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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THOMAS BENJAMIN BROWN,

Plaintiff and Appellant,

v.

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, COUNTY OF ALAMEDA

Defendant and Respondent;

SARA CHRISTINE BIGGS,

Real Party in Interest.

A123386

(Alameda County Super. Ct.  
No. VP08397128)

Appellant Thomas Benjamin Brown seeks reversal of the superior court's order denying his petition pursuant to Health and Safety Code section 103450 (section 103450) for an "Order Establishing Fact of Marriage." Brown argues that the superior court erred because section 103450 and the evidence he submitted required the court to issue the order he requested. We affirm the superior court's order in the absence of a marriage license, which was required by state law to establish the fact, time, and place of Brown's marriage under the circumstances. We decline to address the issues Brown raises regarding Family Code section 425 for the reasons stated herein.

**BACKGROUND**

In July 2008, Brown filed in the Alameda County Superior Court a "Petition for a Court Order Delayed Certificate of Marriage (VS-122)" pursuant to section 103450. Brown prayed that the court "make an order determining that the fact occurred at the time

and place shown,” referring to his purported marriage to Sara Christine Biggs in March 2008 in Livermore, California. Concurrent with his petition, Brown filed his own declaration, as well as declarations from Reverend David R. Brown, Biggs, and Terry L. Thompson.<sup>1</sup> All of the declarants stated that the marriage of Brown and Biggs was solemnized in March 2008 in Livermore. Reverend Brown submitted with his declaration a “Christian Marriage Covenant Constitutional Marriage Contract,” entered into between Brown and Biggs, certified by Reverend Brown, and signed by two witnesses, which stated that the time, date, and place of the solemnization was 1:30 p.m. on March 15, 2008, at the First Presbyterian Church in Livermore. Brown did not submit any evidence that the couple obtained a marriage license, and it appears that they did not because of their religious views, as their counsel indicated during oral argument below and before this court.

At the petition hearing, the court indicated that it was unclear about the applicability of section 103450 when a marriage license had never been obtained and wondered why Brown was not seeking an order under Family Code section 425. The court stated that section 103450 was used in instances where records of a marriage have been lost or destroyed and was for purposes of registration only; if there was no license in the first place, there was no marriage. The court referred to *Estate of DePasse* (2002) 97 Cal.App.4th 92 (*DePasse*), as “specifically holding that the fact of marriage doesn’t cure the failure to obtain a marriage license.” It offered Brown an opportunity to brief the issue, which Brown accepted. The court asked Brown to address Penal Code section 360, section 103451, and Family Code section 425 in his briefing. Brown subsequently submitted a brief with a supporting declaration from his counsel, who attached exhibits of forms he represented to be from the Alameda County Clerk-Recorder and the state Department of Public Health used with regard to section 103450 and Family Code section 425.

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<sup>1</sup> Thompson is also the attorney representing Brown in this case.

In August 2008, the court issued an order denying the petition. The court stated, “The petition and supporting documents did not contain all the facts necessary to enable the court to determine the fact of and the time and place of the marriage on behalf of [Brown].”

Brown filed a timely notice of appeal on October 17, 2008.

## **DISCUSSION**

Brown presents three arguments on appeal, they being that the superior court erred because section 103450 authorized the relief he sought by his petition below, that the court’s ruling was not supported by substantial evidence, and that Family Code section 425 allows for the purchase of a marriage license and registration of a marriage after a marriage ceremony has taken place, but that the language of certain government forms bars him from pursuing this procedure.

### ***I. Health and Safety Code Section 103450***

Brown argues that the court erred because, despite the absence of a marriage license, section 103450 allows for the issuance of a “Delayed Certificate of Marriage” for his marriage. This argument lacks merit.

Brown raises an issue of law. Matters presenting pure questions of law, not involving the resolution of disputed facts, are subject to the appellate court’s independent, or de novo, review. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)

“The state has a vital interest in the institution of marriage and plenary power to fix the conditions under which the marital status may be created or terminated. [Citation.] The regulation of marriage is solely within the province of the Legislature.” (*DePasse, supra*, 97 Cal.App.4th at p. 99.) In his appellate brief, Brown ignores the statutory framework established by the Legislature, which requires that parties seeking to marry in California obtain a marriage license, as can be readily seen by a review of relevant portions of various statutes. For example, Family Code section 300 provides: “(a) Marriage is a personal relation arising out of a civil contract between a man and a woman . . . . Consent must be followed by the issuance of a license and solemnization as authorized by this division, except as provided by [Family Code section] 425 and Part 4

...” Family Code section 306 provides: “Except as provided in [Family Code section] 307, a marriage shall be licensed, solemnized, and authenticated, and the authenticated marriage license shall be returned to the county recorder of the county where the marriage license was issued, as provided in this part.” Family Code section 350 provides: “(a) Before entering a marriage, or declaring a marriage pursuant to [Family Code] section 425, the parties *shall first obtain a marriage license from a county clerk.*” (Italics added.) Family Code section 421 provides: “Before solemnizing a marriage, the person solemnizing the marriage shall require the presentation of a marriage license.” Family Code section 359 indicates that generally, marriage applicants are to appear together before the county clerk to obtain the marriage license, which license is then presented to the person solemnizing the marriage, who must complete the license and return it to the county recorder within 10 days after the ceremony for registration purposes.

Brown concedes that he and Biggs did not obtain a marriage license. Instead, he sought a court order establishing the “fact” of their marriage by relying on section 103450, subdivision (a), which provides: “A verified petition may be filed by any beneficially interested person with the clerk of the superior court . . . for an order to judicially establish the fact of, and the time and place of, a birth, death, or marriage that is not registered or for which a certified copy is not obtainable.” Brown asserts that he was entitled to the order because section 103450 allows one to register a marriage that was not previously registered without a marriage license ever having been issued.

Brown is incorrect under the circumstances, as indicated by the discussion in *DePasse, supra*, 97 Cal.App.4th 92, the case cited by the superior court at the petition hearing. In *DePasse*, a superior court had granted an unopposed petition brought pursuant to section 103450 by the deceased DePasse’s purported husband, Harris, who represented that they had married shortly before DePasse died and were unable to obtain a license in the time available. (*DePasse*, at pp. 96-97.) The issue of whether or not the superior court should have granted this petition was not before the appellate court. Rather, the court reviewed the trial court’s denial of Harris’s spousal property petition in a probate action, wherein the parties debated the disposition of DePasse’s estate. (*Id.* at

pp. 97-98.) The appellate court determined whether or not the “marriage” between DePasse and Harris was valid, and whether Harris’s section 103450 petition cured the lack of a license. (*Id.* at p. 98.) The court held that issuance of a marriage license is a mandatory prerequisite to a valid marriage in California. (*Id.* at p. 102.) After reviewing the relevant statutes and procedures, the court stated:

“According to the statutory scheme, there are five steps in the marriage process. First, the parties must consent. Second, the parties must obtain a license from the county clerk. Since the license and certificate of registry are combined into one form, the parties also obtain the certificate of registry at that time. Third, the marriage must be solemnized. Before solemnizing the marriage, the person conducting the ceremony must ensure that the parties have obtained a marriage license. Fourth, the person solemnizing the marriage must authenticate the marriage by signing the certificate of registry and arranging for at least one witness to sign the certificate. Finally, the person solemnizing the marriage must return the certificate of registry to the county clerk for filing. (*DePasse, supra*, 97 Cal.App.4th at p. 101.)”

The *DePasse* court determined that several of the five steps in the marriage process had not been taken, and that the chaplain by performing the solemnization without regard for the licensing requirement, had exposed himself to criminal penalties pursuant to Penal Code section 360. (*DePasse, supra*, 97 Cal.App.4th at p. 101.)

Most relevant to the present case, the *DePasse* court determined that the use of section 103450 is a procedure designed to cure a failure to *register* the marriage, not the failure to obtain a license. (*DePasse, supra*, 97 Cal.App.4th at p. 105.) It stated that “[a]n ex parte order establishing the fact of marriage pursuant to section 103450 ‘is merely a statistical record acknowledging the late registration of marriage. It is not presumptive or conclusive proof of the fact of the marriage and has no evidentiary weight whatsoever.’ [Citation.] ‘[T]he purpose of obtaining the order is to obtain a certificate to replace one which was never registered or to obtain a certified copy of the registration when the original records were lost or destroyed.’ [Citation.] *Thus the procedure is designed to cure a failure to register the marriage, not the failure to obtain a license.*”

(*Id.* at p. 105, italics added.) The court held “that the petition filed by Harris pursuant to section 103450 did not cure the lack of a marriage license,” and upheld the trial court’s order denying his spousal property petition. (*Id.* at p. 107.)

The *DePasse* court did not rule on the propriety of a lower court’s granting of a section 103450 petition. Nonetheless, its determinations and holding plainly indicate that a person cannot use the section 103450 procedure to establish the “fact” of a marriage when a solemnization is conducted in California, but no license is obtained.

Brown argues that *DePasse* supports his position, quoting that court’s statement that “the purpose of the proceeding [of section 103450] is to establish a record of the marriage, not its validity.” (*DePasse, supra*, 97 Cal.App.4th at p. 105.) However, this passage is quoted out of context and does not allow circumvention of the licensing requirement. The *DePasse* court held that a license is a mandatory requirement, and its absence cannot be remedied by a section 103450 petition. (*Id.* at pp. 105, 107.)

Brown argues that the “clear understanding of the Alameda County Clerk-Recorder is that [section 103450] is the controlling legal authority,” and that his request for a court order is the “appropriate state form/procedure, to use if no marriage license was issued prior to a marriage ceremony.” He bases this argument on an instruction sheet from the Clerk-Recorder that he submitted to the superior court, which his attorney declared the attorney had received from the Clerk-Recorder around the end of May 2008, more than two months after the March 2008 ceremony in Livermore. Brown’s characterization of the instruction sheet is incomplete and inaccurate, however. He fails to note that the form states that the instruction sheet “is not to be considered as legal advice,” advises individuals to consult with an attorney for assistance, and makes clear that the court is responsible for determining the validity of the marriage. Furthermore, nothing on the instruction sheet provides that individuals in Brown’s circumstance are entitled to a court order when a license is never obtained. Brown also fails to establish that the superior court was required to give any weight to this instruction sheet in its determinations about the law. Accordingly, Brown’s argument is unpersuasive.

Brown makes the same arguments regarding a brochure from the Department of Public Health submitted to the superior court, which his attorney also declared he had obtained from the state Department of Public Health around the end of May 2008. Brown ignores that the brochure also advises that individuals seek legal advice from an attorney, and states that the department's staff "cannot provide legal advice, nor do we have information about the legal process." Brown does not show where the brochure indicates he was entitled to the requested order; he merely cites a sentence typed on a sample petition stating as a reason for the hypothetical couple's petition that they "did not apply for a marriage license." We fail to see how this reference is "controlling legal authority," or had any legal weight that the superior court was required to recognize. Accordingly, this argument also is unpersuasive.

In short, Brown, by urging that the superior court's responsibility was "only to review all the facts necessary to determine the fact of, and time and place of the marriage," in effect argues that the superior court could have, and should have, ignored the licensing necessity altogether. California statute and case precedent decisively indicate that this is not correct. Brown's argument that the superior court erred by failing to issue an order determining the fact, time, and place of his marriage pursuant to section 103450 is, therefore, without merit.

## **II. Substantial Evidence**

Brown also argues that the court's order denying the petition violated the substantial evidence rule because there is "**absolutely no** evidence to support an order denying the . . . petition." This argument is also unpersuasive in light of Brown's failure to obtain a marriage license.

"Substantial evidence" is "evidence '*of ponderable, legal significance, . . . reasonable in nature, credible, and of solid value.*' " (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873.) "When a . . . factual determination is attacked on the grounds that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial

evidence, contradicted or uncontradicted, which will support the determination . . . .” (*Id.* at pp. 873-874.)

Brown contends that he established the fact, time, and place of his marriage to Biggs via the evidence included in the declarations submitted to the superior court, such as that of Reverend Brown, who stated that he had performed the marriage solemnization and attached a duly executed “Christian Marriage Covenant Constitutional Marriage Contract.” This ignores that Brown did not establish a necessary factual prerequisite. As we have discussed, California law required that he and Biggs obtain a license to effect their marriage. The superior court’s ruling that “the petition and supporting documents did not contain all the facts necessary to determine the fact of, and the time and place of the marriage” indicates the court’s recognition that the lack of license under Brown’s circumstances was fatal.<sup>2</sup> Brown did not provide any persuasive rationale to the superior court why it should excuse him from this license requirement. Therefore, the court correctly concluded that Brown had failed to establish the fact, time and place of his marriage, regardless of the March 2008 solemnization based upon substantial evidence—the undisputed lack of a license.

### **III. *Family Code Section 425***

Brown also argues that Family Code section 425<sup>3</sup> allows for purchase of a marriage license and registration after a marriage ceremony has taken place. He argues on appeal that he and Biggs did not pursue the procedure authorized by this code section

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<sup>2</sup> Brown does not argue that the trial court was required to state all the factual bases for its conclusion. We presume the court’s stated conclusion was based at least in part on the absence of a license. (See, e.g., *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 534 “[w]here . . . the record is silent, we must presume the trial court found all facts necessary to support the order”].)

<sup>3</sup> Family Code section 425 provides: “If no record of the solemnization of a California marriage previously contracted under this division for that marriage is known to exist, the parties may purchase a License and Certificate of Declaration of Marriage from the county clerk in the parties’ county of residence one year or more from the date of the marriage. The license and certificate shall be returned to the county recorder of the county in which the license was issued.”

“due to the apparent policies of both the State Department of Public Health Office of Vital Records and the Alameda County Clerk-Recorder.” He further contends that form VS-116 of the State Department of Public Health Office of Vital Records makes clear that the couple faces “a major bureaucratic barrier” despite the plain language of Family Code section 425. He contends that the state erred by including certain language in form VS-116 that prevents them from pursuing corrective action, and asks that this court declare that “[a]s a matter of law, Family Code [section] 425 is the controlling code section for registering a marriage which was solemnized prior to obtaining a marriage license.”

Brown acknowledges that the court in *DePasse* declined to address a similar issue, holding that “[w]e need not decide whether section 425 may also be used to cure a defect in the licensing of the marriage, since that issue is not before us. [The couple] made no attempt to declare their marriage pursuant to section 425 before DePasse died.”

(*DePasse*, *supra*, 97 Cal.App.4th at p. 104.) Brown fails to explain how the issue is properly before this court. His petition to the superior court relied entirely on section 103450. While Brown, prodded by the trial court’s reference to the code section, argued in his supplemental briefing that Family Code section 425 allowed corrective action that was barred by certain policies of the State Department of Public Health Office of Vital Records and the Alameda County Clerk-Recorder, he did not cite to, or submit, any evidence that the couple attempted to follow these procedures, merely arguing in his brief that they did not pursue the procedure due to these policies. The only evidence he submitted was obtained by his attorney long after the solemnization had occurred. Given that Brown did not petition for relief under Family Code section 425, and the absence of any evidence that the couple took any action that implicated this code section, the court properly ignored this argument in its ruling.

Moreover, if the superior court had ruled on the issue, it would have in effect issued an advisory opinion. The same is true for this court. As more fully explained in *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43. “ ‘[I]t is . . . the prevailing doctrine in our judicial system that an action not founded upon an actual controversy

between the parties to it, and brought for the purpose of securing a determination of a point of law, is collusive and will not be entertained[.]’ ” (*Id.* at p. 66.) “[E]ven in circumstances when an issue involves significant public interest, California courts adhere to the even older, and more important, judicial policy against issuing advisory opinions. ‘[N]either we nor the trial court can give advisory opinions or resolve disputes over matters which involve parties not before us . . . .’ ” (*Id.* at p. 69.)

We follow *DePasse*, *supra*, 97 Cal.App.4th at page 104, and the prohibition against advisory opinions, and decline to rule on Brown’s appellate arguments regarding Family Code section 425.

### **DISPOSITION**

The judgment is affirmed.

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Lambden, J.

We concur:

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Kline, P.J.

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Haerle, J.